

HOUSE BILL NO. 570

INTRODUCED BY J. SHOCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WATER LAWS; AUTHORIZING ~~THE ATTORNEY GENERAL OR~~ A COUNTY ATTORNEY TO BRING AN INDEPENDENT ACTION FOR THE ENFORCEMENT OF WATER USE LAWS; ~~EXTENDING THE ALLOWABLE TIME FOR ATTEMPTING TO OBTAIN VOLUNTARY COMPLIANCE;~~ CHANGING THE ALLOWABLE TIME FOR ATTEMPTING TO OBTAIN VOLUNTARY COMPLIANCE; PROVIDING FOR THE DEPOSIT OF PENALTIES COLLECTED PURSUANT TO AN INDEPENDENT ACTION; ~~PROVIDING THAT AN APPLICATION FOR A PERMIT MAY NOT BE ACCEPTED IF AN UNAUTHORIZED DIVERSION IS IN PLACE; PROVIDING THAT A PRIORITY DATE FOR THE DIVERSION MAY NOT BE ESTABLISHED UNTIL A PROPER APPLICATION IS FILED AND APPROVED;~~ AMENDING SECTIONS 85-2-114, 85-2-122, AND 85-2-123, ~~AND 85-2-302,~~ MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-114, MCA, is amended to read:

"85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may, after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4), petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take ~~such steps as~~ that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a

1 provision of this chapter is being violated.

2 (2) Upon the issuance of an order or injunction, the department may attach to the controlling
3 works a written notice, properly dated and signed, setting forth the fact that the controlling works have
4 been properly regulated by it, ~~which~~ The notice shall be constitutes legal notice to all persons interested
5 in the appropriation or distribution of the water.

6 (3) The department may also direct its own attorney or request the attorney general or county
7 attorney to bring suit to enjoin ~~such~~ the waste, unlawful use, interference, or violation. The attorney
8 general or a county attorney may PROSECUTE UNDER 85-2-122(1) OR bring an action UNDER 85-2-122(2)
9 without being requested to do so by the department. The attorney general and a county attorney are
10 subject to the voluntary compliance provisions of subsection (4).

11 (4) The department ~~must~~ shall attempt to obtain voluntary compliance through warning,
12 conference, or any other appropriate means before petitioning the district court under subsection (1). The
13 attempts to obtain voluntary compliance under this subsection MUST EXTEND OVER A PERIOD OF AT LEAST 7
14 DAYS AND may not exceed ~~3~~ 30 ~~3~~ 30 working days."

15

16 **Section 2.** Section 85-2-122, MCA, is amended to read:

17 **"85-2-122. Penalties.** (1) A person who violates or refuses or neglects to comply with the
18 provisions of this chapter, any order of the department, or any rule of the department is guilty of a
19 misdemeanor.

20 (2) A person who violates or refuses or neglects to comply with the provisions of 85-2-114, any
21 order of the department, or any rule of the department is subject to a civil penalty not to exceed \$1,000
22 per violation. Each day of violation constitutes a separate violation.

23 (3) ~~(a) Fines~~ Except as provided in subsection (3)(b), fines collected by the department or a district
24 court under subsection (2) must be deposited in the account established in 85-2-318 for use by the
25 department in the enforcement of 85-2-114.

26 (b) If a fine is collected by an independent action brought by the attorney general or a county
27 attorney, the fine must be deposited in the general fund of the state or the county as appropriate."

28

29 **Section 3.** Section 85-2-123, MCA, is amended to read:

30 **"85-2-123. Deposit of fees and penalties.** Except as provided in 85-2-122 and 85-2-124, all fees

1 and penalties collected under this chapter must be deposited in the water right appropriation account
2 established in 85-2-318. Except for fines collected by a district court under 85-2-122, all penalties or fines
3 imposed by any court other than a justice's court for a violation of this chapter must be deposited in the
4 general fund of the county where the court presides and must be disposed of in the same manner as any
5 other penalty or fine."

6
7 ~~Section 4. Section 85-2-302, MCA, is amended to read:~~

8 ~~"85-2-302. Application for permit. (1) Except as otherwise provided in 85-2-306(1) through (3),~~
9 ~~a person may not appropriate water or commence construction of diversion, impoundment, withdrawal,~~
10 ~~or related distribution works except by applying for and receiving a permit from the department. The~~
11 ~~application must be made on a form prescribed by the department. The department shall make the forms~~
12 ~~available through its offices and the offices of the county clerk and recorders. The applicant shall submit~~
13 ~~a correct and complete application. The department shall notify the applicant of any defects in an~~
14 ~~application. An application does not lose priority of filing because of defects if the application is corrected~~
15 ~~or completed within 30 days of the date of notification of the defects or within a further time as the~~
16 ~~department may allow, but not to exceed 90 days from the date of notification. If an application is made~~
17 ~~correct and complete after the mandated time period, but within 90 days of the date of notification of the~~
18 ~~defects, the priority date of the application is the date the application is made correct and complete. An~~
19 ~~application not corrected or completed within 90 days from the date of notification of the defects is~~
20 ~~terminated.~~

21 ~~(2) If a diversion is in place for which a water use permit has not been issued, a permit application~~
22 ~~may not be accepted until the diversion is removed. A priority date for the diversion may not be~~
23 ~~established until a proper application is filed and approved."~~

24
25 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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